HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

C-482 No. 908/06

Amrish Kumar Sharma

& others

Vs

State of Uttaranchal

& others

Approved for reporting.

Not approved for reporting

Date of decision 11.02.2006

Initials of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 908 OF 2006

1. Amrish Kumar Sharma,
   S/o Shri Sewa Ram,
   R/o 144, Gitanjali Vihar Ganeshpur,
   Roorkee, P.S. Gangnahar, Roorkee,
   District - Haridwar.
2. Mayank Gupta, S/o Shri Om Prakash

R/o 244, Yoganand Vihar Purvi Deendayal,
P.S. Gangnahar, Roorkee,
District-Haridwar.

3. Brijesh Gupta, S/o Shri Gyan Chand,
R/o Moqtoolpuri Roorkee, P.S. Gangnahar,
Roorkee, District-Haridwar.

4. Umesh Kohali, S/o Shri E.B. Kohali
R/o 256, Lane No. 10, Ramnagar,
P.S. Gangnahar, Roorkee
District-Haridwar.

5. Praduman S/o Shri Janak,
R/o Maqtoolpuri, Roorkee,
P.S. Gangnahar Roorkee,
District-Haridwar. .....Applicants.

Vs.

1. State of Uttaranchal.
2. Shri S.C. Tyagi, Up Khand Adhikari,
Vidyut Vitaran Up Khand-I, Roorkee,
P.S.-Kotwali, Roorkee,
District-Haridwar. .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Ajay Veer Pundir, counsel for the applicants and A.G.A. for the State.

2. By the present application filed under Section 482 of the Code of Criminal Procedure, applicants have prayed for quashing the charge-sheet and cognizance order dated 12.07.2006 passed by the IInd Additional Civil Judge (Jr. Div.)/J.M. Roorkee in case No. 367 of 2006 and in Case Crime No. 99 of 2006 under Sections 353/423/147 I.P.C. and 3/7 of Criminal Law Amendment Act and 3/4 of Damage Act. Further prayer has been made for staying the proceedings of the aforesaid case.

3. Briefly stated, the respondent no. 2 lodged an FIR against application no. 1 and 30-40 unknown persons stating therein that on 04.04.2006 at about 1.00 p.m. the members of B.J.P. were agitating against electricity cut and gathered in the office of D.G.M. Vidhyut Vitran Mandal, Roorkee to give him a memorandum and giving speech and slogans against the department and the Govt., all reached in the office of D.G.M. and damaged the telephone furniture office records etc. after giving memorandum to Shri Arun Kumar Office Superintendent and went away.

4. Counsel for the applicant has submitted that till date no investigation has been done by the Investigating Office in the matter, neither he has recoded the statement of the applicants under Section 161 of the Code of Criminal Procedure, nor he tried to find out the truth of the incident, but has illegally submitted

the charge-sheet against the applicants before the Court below.

5. After submission of the charge-sheet the IInd Additional Civil Judge (Jr. Div.)/Judicial Magistrate, Roorkee, took cognizance against the applicants on 12.07.2006.

6. A perusal of the F.I.R. shows that except applicant no. 1, other applicants have not been specifically assigned any role in the FIR and applicants have no criminal history as stated by the State Counsel.

7. Without entering into the merit of the controversy, since the FIR has been lodged, therefore, there is no occasion to short-circuit the trial in view of ***Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. (2000) 3 SCC 269,*** where it has been held as under:

> "*19. Considering the factual aspect of the matter, we unhesitatantly state, however, that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. We, thus, without expressing any opinion on the merits of the case allow the appeal and set aside the impugned order of the High Court and resotre the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of the same in accordance with the law*

with utmost expedition. Be it clarified however that observations as above in this judgment be not taken as an expression of any opinion of ours."

8. As will appear from the F.I.R. that since it is a dispute between the rival parties, therefore, I do not find any reason to detain these persons in civil prison. However, in order to safeguard the interest of the prosecution, in pursuance of the charge-sheet, their appearances are necessary.

9. However, the Presiding Officer is directed to expedite the release of the applicants on bail on the same day and ensure their presence regularly. The applicants are directed to furnish the personal bonds to the satisfaction of the Magistrate concerned for their regular appearance in the case.

9. Subject to aforesaid, application filed under Section 482 of the Code of Criminal Procedure is disposed of.

(Rajesh Tandon, J.)

11.12.2006

Rathour